



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

CW.

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,925	12/19/2001	Shane A. Straw SR.	955-3085-U	5640

7590

06/04/2003

ROBERT H. EARP, III
MCDONALD, HOPKINS, BURKE & HABER CO, L.P.A.
2100 BANK ONE CENTER
600 SUPERIOR AVENUE, E.
CLEVELAND, OH 44114-2653

EXAMINER

WATSON, ROBERT C

ART UNIT PAPER NUMBER

3723

DATE MAILED: 06/04/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,925

Applicant(s)

STRAW ET AL.

Examiner

Robert C. Watson

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-11, 14-17 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 12 and 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 14-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 14, line 8 recites for the very first time "a nut retainer member seated within one of said upper or lower jack tubes". Since this is the first time that a suggestion has been made that the nut retainer could possibly be placed in the upper jack tube instead of the lower jack tube, **this is new matter**.

Claims 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 15, line 2 "said upper or lower" is ambiguous.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-11, and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hying et al in view of Zimmer.

Hying et al shows a screw jack having relatively slideable jack tubes. Hying et al at Figure 3 shows a nut 7 captured in a nut retainer seated withing an upper end of a lower jack tube. The nut retainer is integral with the upper end of the jack.

Art Unit: 3723

Zimmer teaches the use of a nut retainer 46 separate from the end of a tube 20. The nut retainer permits insertion of the nut by means of a lateral slot. The nut retainer is nestingly received in the end of the tube.

To employ a nut retainer nestingly received in the upper end of the Hying et al lower jack tube whereby the nut can be inserted in a lateral slot of the nut retainer would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Zimmer. One of ordinary skill in the art would have been motivated to do this in order to provide a cheaper and easier means for capturing the Hying et al nut in the upper end of the lower jack tube.

Claims 6-7 and 12-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants' remarks have been given careful consideration. In particular applicants have taken the position that element 20 of Zimmer is not a "tube". Since elongate member 20 of Zimmer is hollow with an opening at each end it is proper to call member 20 a "tube" and nut retainer 46 is most certainly seated or nestingly received within this tube. Applicants also argue that the Zimmer reference is "non-analogous subject matter". Applicants' position in this regard is believed to be in error. Zimmer deals with the problem of retaining a nut in a tube as does the primary reference, Hying et al. It is noted that applicants' remarks are silent as to the presentation of new claim 14 and there is certainly no attempt by applicants to present any statement that

there is support found in the description for the claim 14 language, "a nut retainer member seated within one of said upper or lower jack tubes".

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert C. Watson whose telephone number is 703 308-1747. The examiner can normally be reached on Mon. - Thurs. , 5:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on 703 308-2687. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-3579 for regular communications and 703 305-9835 for After Final communications.

Art Unit: 3723

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.



ROBERT C. WATSON
PRIMARY EXAMINER

rcw
June 2, 2003